

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

HERMÈS INTERNATIONAL and
HERMÈS OF PARIS, INC.,

Plaintiffs,

-against-

MASON ROTHSCHILD,

Defendant.

CIVIL ACTION NO.

22-CV-00384 (JSR)

DECLARATION OF JESSICA H. FERNANDEZ

I, Jessica H. Fernandez, declare as follows:

I am an attorney associated with the firm of Baker & Hostetler LLP, attorneys for Plaintiffs Hermès International and Hermès of Paris, Inc. (“Hermès”) in the above-captioned case. I submit this declaration in support of Hermès’s Opposition to Defendant’s Renewed Motion for Judgment as a Matter of Law or New Trial. I have firsthand knowledge of the matters stated herein.

1. Attached hereto as **Exhibit 1** is a true and correct copy of excerpts from the February 6, 2023 trial transcript.

2. Attached hereto as **Exhibit 2** is a true and correct copy of excerpts from the February 3, 2023 trial transcript.

3. Attached hereto as **Exhibit 3** is a true and correct copy of excerpts from the February 7, 2023 trial transcript.

4. Attached hereto as **Exhibit 4** is a true and correct copy of a LinkedIn Post by Cassidy Mandelbaum, with comments from Jane Kramer,

https://www.linkedin.com/posts/cassidy-mandelbaum_metabirkin-is-a-really-interesting-case-activity-7029962054279073792-0P3w/?utm_source=share&utm_medium=member_desktop, captured on February 23, 2023 using PageVault.¹

5. Attached hereto as **Exhibit 5** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 323, an email exchange between Kenneth Loo, Mason Rothschild, and Christina Criddle, with the subject line "Confirming Interview with Mason Rothschild regarding MetaBirkins NFT counterfeits-Tuesday December 7, 2021 at 11AM PDT," culminating in an email from Kenneth Loo sent January 17, 2022.

6. Attached hereto as **Exhibit 6** is a true and correct copy of a screenshot of the *Women's Wear Daily* article titled "EXCLUSIVE: Mason Rothschild Speaks About Hermès NFT Case" dated November 22, 2022, captured March 10, 2023 using PageVault.

7. Attached hereto as **Exhibit 7** is a true and correct copy of a February 8, 2023 tweet from Mason Rothschild's Twitter, captured on February 23, 2023 using PageVault.

8. Attached hereto as **Exhibit 8** is a true and correct copy of a February 8, 2023 tweet from Chris Sprigman's Twitter, captured on February 23, 2023 using PageVault.

9. Attached hereto as **Exhibit 9** is a true and correct copy of a screenshot of *The Washington Post* article titled "A misguided jury failed to see the art in Mason Rothschild's MetaBirkins" dated February 24, 2023, captured February 24, 2023 using PageVault.

10. Attached hereto as **Exhibit 10** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 5, an excerpt of the U.S. Trademark and Patent Office's Trademark Status &

¹ PageVault is a service that helps legal professionals capture Web Based Content in a manner that preserves and accurately portrays the Web Based Content as of the date of the capture.

Document Retrieval record for Registration No. 2991927, generated on July 7, 2022, and the Registration Certificate for Registration No. 2991927.

11. Attached hereto as **Exhibit 11** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 6, an excerpt of the U.S. Trademark and Patent Office's Trademark Status & Document Retrieval record for Registration No. 3936105, generated on July 7, 2022, and the Registration Certificate for Registration No. 3936105.

12. Attached hereto as **Exhibit 12** is a true and correct copy of excerpts from the January 31, 2023 trial transcript.

13. Attached hereto as **Exhibit 13** is a true and correct copy of excerpts from the January 11, 2021 deposition testimony of Robert Chavez, admitted into evidence at trial on January 30, 2023.

14. Attached hereto as **Exhibit 14** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 255, a screenshot of "MetaBirkins and Beyond," from <https://mirror.xyz/masonrothschild.eth/wnu9INib4HflsLIITwzarSDtzOigfHHgdHepF3pjOQs>.

15. Attached hereto as **Exhibit 15** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 8, a compilation of United States press coverage of the BIRKIN handbag.

16. Attached hereto as **Exhibit 16** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 16, a compilation of international press coverage of the BIRKIN handbag.

17. Attached hereto as **Exhibit 17** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 10, a compilation of screenshots of scenes from television shows and movies featuring the BIRKIN handbag.

18. Attached hereto as **Exhibit 18** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 9, an article in *Harper's Bazaar*, The Legacy Issue, titled "The Mighty, MIGHTY Birkin."

19. Attached hereto as **Exhibit 19** is a true and correct copy of excerpts from the February 1, 2023 trial transcript.

20. Attached hereto as **Exhibit 20** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 272, a redacted text message exchange between Mason Rothschild and Mark Design, dated November 4, 2021.

21. Attached hereto as **Exhibit 21** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 227, a screenshot of the METABIRKINS Website, <https://metabirkins.com/>, accessed on December 1, 2021.

22. Attached hereto as **Exhibit 22** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 308, excerpts of a text message exchange between Mason Rothschild, Moshe Sacks, and Truman Sacks, dated December 16, 2021 through June 7, 2022.

23. Attached hereto as **Exhibit 23** is a true and correct copy of Defendant's Admitted Trial Exhibit 620, a screenshot of Discord Messages dated December 22, 2021.

24. Attached hereto as **Exhibit 24** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 45, a screenshot of the Google Search results for "hermes nft," captured January 26, 2023.

25. Attached hereto as **Exhibit 25** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 380, a screenshot of the *Elle UK* article, "BIRKIN NFT: Everything You Need To Know About The 'Handbag' Of The Future."

26. Attached hereto as **Exhibit 26** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 254, a screenshot of the *Challenges* article titled "What is the interest of the luxury world to invest in NFTs?" dated May 23, 2022, captured October 6, 2022 using PageVault.

27. Attached hereto as **Exhibit 27** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 315, a screenshot of the *Elle UK* article titled "BIRKIN NFT: Everything You Need To Know About The 'Handbag' Of The Future," captured August 1, 2022 using PageVault.

28. Attached hereto as **Exhibit 28** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 253, a screenshot of the *New York Post* article titled "Metaverse clothing, travel, plastic surgery: Experts predict life in 2030," from <https://nypost.com/2022/01/08/experts-predict-living-in-the-metaverse-by-2030/>, captured January 26, 2022.

29. Attached hereto as **Exhibit 29** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 309, a text message exchange between Mason Rothschild, Moshe Sacks, and Truman Sacks.

30. Attached hereto as **Exhibit 30** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 279, excerpts of screenshots of posts on the METABIRKINS Instagram Account, accessed February 24, 2022.

31. Attached hereto as **Exhibit 31** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 100, excerpts of an SMI Aware Export of the METABIRKINS page on Twitter, <https://twitter.com/MetaBirkins>.

32. Attached hereto as **Exhibit 32** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 193, excerpts of demonstratives for Dr. Bruce Isaacson's testimony titled "Survey Measuring Likelihood of Confusion Between MetaBirkins and Birkin Handbags."

33. Attached hereto as **Exhibit 33** is a true and correct copy of excerpts from the February 2, 2023 trial transcript.

34. Attached hereto as **Exhibit 34** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 242, a text message exchange between Mason Rothschild and an individual, dated December 2, 2021.

35. Attached hereto as **Exhibit 35** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 239, a redacted text message exchange between Mason Rothschild and Mark Design, dated November 7, 2021.

36. Attached hereto as **Exhibit 36** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 146, a screenshot of a December 11, 2021 post on the METABIRKINS Instagram Account.

37. Attached hereto as **Exhibit 37** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 243, a redacted text message exchange between Mason Rothschild and Mark Design, dated October 19, 2021.

38. Attached hereto as **Exhibit 38** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 224, a redacted text message exchange between Mason Rothschild and Eric Ram, dated October 24, 2021.

39. Attached hereto as **Exhibit 39** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 225, a redacted text message exchange between Mason Rothschild and Aaron Maresky, dated October 28, 2021.

40. Attached hereto as **Exhibit 40** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 373, a redacted text message exchange between Mason Rothschild and Lauren, dated December 2, 2021.

41. Attached hereto as **Exhibit 41** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 305, a text message exchange between Mason Rothschild, Moshe Sacks, and Truman Sacks, dated December 3, 2021.

42. Attached hereto as **Exhibit 42** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 306, excerpts of a text message exchange between Mason Rothschild, Moshe Sacks, and Truman Sacks, dated November 30, 2021 through December 3, 2021.

43. Attached hereto as **Exhibit 43** is a true and correct copy of excerpts from the January 30, 2023 trial transcript.

44. Attached hereto as **Exhibit 44** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 67, Figure 10 of Kevin D. Mentzer, Ph.D.'s Expert Report.

45. Attached hereto as **Exhibit 45** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 83, an image of METABIRKINS NFT Bag #64 veiled.

46. Attached hereto as **Exhibit 46** is a true and correct copy of Defendant's Admitted Trial Exhibit 525, a screenshot of the I Like You, You're Weird page on OpenSea.

47. Attached hereto as **Exhibit 47** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 232, a redacted text message exchange between Mason Rothschild and Mark Design, dated November 29, 2021.

48. Attached hereto as **Exhibit 48** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 238, a screenshot of an October 29, 2021 Tweet from Mason Rothschild's Twitter.

49. Attached hereto as **Exhibit 49** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 387, direct messages between Instagram users hectourc and METABIRKINS, dated November 8, 2021 through December 8, 2021.

50. Attached hereto as **Exhibit 50** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 388, a direct message on Twitter from Hectourc to the METABIRKINS Twitter, dated December 3, 2021.

51. Attached hereto as **Exhibit 51** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 389, a May 13, 2021 email from Basic.Space to mase@masonrothschild.com, with the subject "Your bid has been placed."

52. Attached hereto as **Exhibit 52** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 390, a May 14, 2021 email from Basic.Space to mase@masonrothschild.com, with the subject "Your bid has been placed."

53. Attached hereto as **Exhibit 53** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 20, the December 16, 2021 letter and attachments from Gerald J. Ferguson at BakerHostetler to Defendant Mason Rothschild, with the subject "Re: URGENT! Unauthorized Use of Hermès' Trademarks."

54. Attached hereto as **Exhibit 54** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 134, a draft tweet by Mason Rothschild.

55. Attached hereto as **Exhibit 55** is a true and correct copy of Plaintiffs' Admitted Trial Exhibit 144, Figure 15 of Dr. Scott Kominers' Expert Report.

56. Attached hereto as **Exhibit 56** is a true and correct copy of excerpts from the September 23, 2022 deposition of Dr. Blake Gopnik.

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: March 28, 2023
New York, New York

By: /s/ Jessica H. Fernandez
Jessica H. Fernandez